

EXHIBIT 8

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:) Chapter 11
)
W.R. GRACE & CO., et al.,) Case No. 01-1139(JKF)
)
 Debtors.) Jointly Administered
)
)

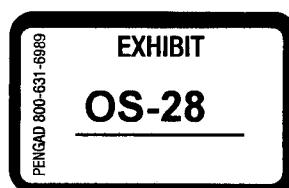
**OBJECTIONS OF BNSF RAILWAY COMPANY TO CONFIRMATION OF THE FIRST
AMENDED CHAPTER 11 PLAN OF W.R. GRACE & CO., ET AL., THE OFFICIAL
COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, THE ASBESTOS PI
FUTURE CLAIMANTS' REPRESENTATIVE, AND THE OFFICIAL COMMITTEE OF
EQUITY SECURITY HOLDERS DATED FEBRUARY 3, 2009**

BNSF Railway Company and its predecessors, the Great Northern Railway Company, the Burlington Northern Railroad Company, and the Burlington Northern & Santa Fe Railway Company (collectively, "BNSF"), object to confirmation of the First Amended Chapter 11 Plan of W.R. Grace & Co., et al., The Official Committee of Asbestos Personal Injury Claimants, The Asbestos PI Future Claimants' Representative, and the Official Committee of Equity Security Holders (collectively, the "Plan Proponents") Dated February 3, 2009 (the "Plan"), and state as follows:

I. FACTUAL BACKGROUND

A. BNSF's Indemnification and Contribution Claims Against Debtors

1. W.R. Grace & Co. and its predecessors ("Grace") operated a mine in Libby, Montana, at which it mined vermiculite which contained tremolite asbestos.
2. Grace's operations at the Libby mine resulted in the release of tremolite asbestos into the community. This allegedly resulted in significant levels of asbestos-related diseases in and around Libby.



3. At least as early as 1942, pursuant to various contracts and leases, BNSF transported vermiculite mined by Grace, and loaded onto rail cars by Grace, over BNSF's rail network.

4. BNSF is defending suits asserting injuries allegedly resulting from vermiculite mined in Libby, loaded by Grace and transported by BNSF. In addition, some cases have been settled by BNSF and settlement payments made, without formal litigation having been brought by the individual claimants.

5. BNSF has been informed by various plaintiffs' counsel that there are a substantial number of additional employee and non-employee claims for which litigation has not yet been filed.

6. The terms of the contracts and leases between Grace and BNSF obligate Grace to indemnify BNSF for claims asserted against BNSF. These provisions require Grace to provide indemnity even if BNSF engaged in negligent conduct (BNSF denies any negligence).¹

¹ For example, the contract between Grace and BNSF dated April 20, 1950, provides:

[Grace] shall, and hereby does, further agree to indemnify and hold harmless the Railway Company of and from any and all liability, damages, recoveries, judgments, cost, expense or other charges and demands, on account of injuries to or death of one or more persons, or damage to or destruction of the property of one or more persons, resulting from or during the construction, repair, maintenance or operation of said bridge and conveyor belt, or resulting from or during the use of said premises by the Applicant, the applicant's agents, servants, employees, patrons or customers, or by any other persons, whether caused by the negligence of the Railway Company, its agents, servants and employees, or otherwise. The Applicant further agrees to appear and defend in the name of the Railway Company any suits or actions at law brought against it on account of any such personal injuries, death, or damage to property, and to pay and satisfy any final judgment that may be rendered against the Railway Company in any such suit or action. The liability assumed by the Applicant herein shall not be affected or diminished by the fact, if it be a fact, that any such suit or action brought against the Railway Company may arise in whole or in part out of the negligence of the Railway Company, its officers, agents, servants or employees, or be contributed to in whole or in part by such negligence. The foregoing language of this Section 8 shall not be construed as imposing on the Applicant

(continued...)

7. In addition to BNSF's contractual indemnification rights, BNSF further asserts a right to contribution from Grace as authorized by applicable state common law for claims asserted against BNSF arising out of Grace's operation of the Libby mine together with the transportation of its vermiculite over the BNSF rail network.²

B. Insurance Policies Purchased By Grace Naming BNSF as the Insured.

8. As provided in the lease between Grace and BNSF dated April 20, 1950, covering property in Libby, Grace was obligated to purchase policies of public liability and property damage insurance protecting BNSF. The contract provides:

[Grace] shall obtain and keep in full force and effect during the continuation of this agreement, at its own sole cost and expense, a policy of public liability and property damage insurance protecting [BNSF] against loss on account of injuries to or death of persons, and loss of or damage to property arising out of the use of said premises or arising out of the construction, maintenance, use and removal of said suspension bridge and conveyor belt. Said policy of insurance shall be submitted to [BNSF] for approval as to the Insurance Company writing the same, the amount, and the form, and shall protect [BNSF] against loss on account of injuries to or death of one person in the sum of \$100,000.00, and for injuries to or death of more than one person in any one accident in the sum of \$500,000.00, and for damage to property in the minimum amount of \$500,000.00. Said policy when approved by [BNSF] shall be delivered to it by [Grace].

9. In accordance with its contractual obligation, Grace purchased such policies of public liability and property damage insurance for BNSF's behalf. These policies

(continued...)

liability for any loss or damage to persons or property which would have occurred in the absence of the construction, repair, maintenance, operation or existence of the said suspension bridge, conveyor belt and loading dock and their appurtenances upon the property of the Railway Company.

² For voting purposes only, BNSF's claims for contractual indemnification and contribution have been estimated by the Debtors at \$1. The total value of its claim is unliquidated.

were issued by Arrowood Indemnity Company f/k/a Royal Indemnity Company (“Arrowood”), for policy years 1950 through 1965; by Maryland Casualty Company, Zurich Insurance Company or Zurich International (Bermuda) Ltd. (collectively, “MCC”), for policy years 1965 through 1974; and by Continental Casualty Company (“Continental”) for policy years 1974 through 1984.

10. Grace is not a named insured on these policies; BNSF is the named insured.³

C. Grace’s Insurance Policies List BNSF as an Additional Insured.

11. In addition to the separate policies described above, the same insurer issued policies in favor of Grace, but which list BNSF as additional insureds.

12. Some of these policies have shared limits while some provide independent limits available to BNSF. Claim against the latter policies will not affect insurance benefits otherwise available to the debtor.

13. Additionally each policy contains a separate, independent duty to defend BNSF.

14. Arrowood issued policies in favor of Grace. These policies begin at March 31, 1953 and last through April 1, 1963. The first two years of these policies contain an

³ Despite diligent searching, BNSF has not been able to locate copies of these policies. However, BNSF has copies of contemporaneous correspondence confirming that such policies were issued, and that the named insured was BNSF. See e.g. letter dated May 5, 1961, from J.L. Toot, Account Executive, Detroit Insurance Agency, to James C. Kenady, Land And Tax Commissioner, Great Northern Railway Company, attached as Exhibit A, which provides in relevant part:

[Y]our files should contain an additional policy issued by the Royal Indemnity Company numbered RLH 021669, which is issued for the period April 20, 1959 to April 20, 1962, specifically naming the Great Northern Railway Company as the insured and covering the construction, maintenance, use and removal of suspension bridges and conveyors. This obligation has been handled in this manner in a separate policy for many years because of Article 9 of your agreement with Zonolite Company [Grace’s predecessor] which specifically

(continued...)

unambiguous endorsement under which Royal Indemnity assumes the liability of Zonolite Company to indemnify the railroad arising out of the April 20, 1950 lease quoted in paragraph 8 above. These endorsements are exemplified by the attached **Exhibit B**.

15. Beginning with the policy period April 1, 1955, the endorsement was changed. For those policies, it provided that the contractual liability insurance under the policy applied to the liability assumed by Grace under the same 1950 lease covering property near Libby, Montana. Significantly, this endorsement - which inures only to the benefit of BNSF - contains sub-limits. These endorsements are exemplified in the attached **Exhibit C**.

16. Under the terms of these endorsements, the insurer undertakes to provide coverage to the BNSF for separate bodily injury limits of \$200,000 per person. A separate premium was paid for these endorsements. There is no annual aggregate. To the contrary, the endorsement does not state that the overall limits of liability of the policy are applicable to the endorsement. Accordingly, these limits are separate and apart from any other liability limits in the policy. Claims against these liability limits will not affect the benefits to which the debtor is otherwise entitled to under the terms of the policy.

II. THE PLAN'S INSURANCE INJUNCTIONS AND TREATMENT OF ASBESTOS CLAIMS

A. The Insurance Injunctions

17. The Plan defines "Asbestos Insurance Entity" as:

any Entity, including any insurance company, broker, or guaranty association, that has issued, or that has or had actual or potential

(continued...)

requires that Zonolite Company provide and pay for a Liability policy protecting the Railway Company against loss.

liability, duties or obligations under or with respect to, any Asbestos Insurance Policy.

Plan, Section 1.1, at page 4 (definition number 10).

18. "Asbestos Insurance Policy" is defined as:

any insurance policy under which any Insurance Contributor has or had insurance coverage with a policy period incepting prior to June 30, 1985, whether known or unknown, that actually or potentially provides insurance coverage for any Asbestos Claim, including the policies listed on schedule 1 attached to Exhibit 6 in the Exhibit Book.

Plan, Section 1.1 at page 5 (definition number 11).

19. The Debtors entered into or may in the future enter into settlement agreements with certain of their insurers. The Plan defines the term "Settled Asbestos Insurance Company" as:

any Asbestos Insurance Entity that has entered into an Asbestos Insurance Settlement Agreement prior to the conclusion of the Confirmation Hearing; *but only* with respect to, and only to the extent of, any Asbestos Insurance Policy (or any portion thereof) identified as the subject of an Asbestos Insurance Settlement Agreement in Exhibit 5 in the Exhibit Book; *provided however*, that (i) each such Asbestos Insurance Settlement Agreement is listed by the Plan Proponents, acting together, in Exhibit 5 and (ii) the Asbestos Insurance Settlement Agreement is approved by the court as sufficiently comprehensive to warrant treatment under section 524(g) of the Bankruptcy Code; and *further provided*, for the avoidance of doubt, that an Asbestos Insurance Entity is a Settled Asbestos Insurance company to the fullest extent, but only to the extent, provided by section 524(g) in respect of any claim that arises by reason of one of the activities enumerated in section 524(g)(4)(A)(ii).

Plan, at Section 1.1, pages 36-37 (definition 199).

20. The Plan provides for a channeling injunction, purportedly pursuant to Section 524(g) of the Bankruptcy Code, that protects Settled Asbestos Insurance Companies, from any asbestos-related personal injury claims as defined in the Plan, including Indirect PI Trust Claims. See Plan, at Section 8.2.1, pages 89-90.

21. No Settled Asbestos Insurance Company is making a contribution to the Asbestos PI Trust in exchange for the channeling injunction.

22. The Plan further provides for an “Asbestos Insurance Entity Injunction,” purportedly pursuant to Section 105(a) of the Bankruptcy Code, that enjoins holders of Asbestos PI Claims, including Indirect PI Trust Claims, from asserting such claims against any Asbestos Insurance Entity.

23. No Asbestos Insurance Entity is making a contribution to the Asbestos PI Trust in exchange for the Asbestos Insurance Entity Injunction.

24. If confirmed in its present form, the Plan’s channeling injunction and Asbestos Insurance Entity Injunction will enjoin holders of Asbestos PI Claims, including Indirect PI Trust Claims, who assert rights under insurance policies issued by either settled or non-settled asbestos insurance entities, from making claim against the insurers under the applicable policies.

B. Plan Treatment of BNSF’s Claims

25. The Plan classifies BNSF’s claims and demands for contribution and indemnification as Class 6, Indirect PI Trust Claims. *See Plan at Section 1.1, page 28 (definition 137).*

26. Indirect PI Trust Claims, which are included in the defined term “Asbestos PI Claims” are channeled to the Asbestos PI Trust. *See Plan at Section 1.1, pages 11-12 (definition 32); Section 3.16.*

27. Claims channeled to the Asbestos PI Trust “shall be resolved in accordance with the terms, provisions and procedures of the Asbestos PI Trust Agreement and the Asbestos PI TDP.” *See Plan at Section 3.1.6(b)(i).*

28. The Asbestos PI Trust Agreement appoints attorneys representing asbestos personal injury claimants as the Trustees of the Asbestos PI Trust. Plan, Exhibit 2, Section 4.1.

III. OBJECTIONS

A. The Plan Cannot Enjoin BNSF From Pursuing Its Contractual Insurance Rights Under Separate Policies Issued to BNSF.

29. BNSF has asserted, and once the court-extended automatic stay is lifted, will pursue coverage claims against Arrowood, MCC and Continental in accordance with the insurance policies purchased by Grace for the benefit of BNSF. The Plan improperly seeks to enjoin such actions.

30. The separate policies purchased by Grace for BNSF do not list Grace as an insured. BNSF alone is the named insured. None of the proceeds of the policies constitute an asset of the estate. 11 U.S.C. § 541(a). Accordingly, this Court does not have jurisdiction to enjoin BNSF from asserting its contractual claims against the insurers. *In re Johns-Manville Corp.*, 517 F. 3d 52 (2d Cir. 2008) *cert granted sub nom Travelers Indem. Co. v. Bailey*, 129 S. Ct. 761 (Dec 12, 2008) and *cert granted sub nom Common Law Settlement Counsel v. Bailey*, 129 S. Ct. 762 (Dec 12, 2008) (holding by the Court of Appeals that the bankruptcy court does not have “related to” jurisdiction over direct claims against insurers).

31. Nor does the injunction against claims asserted by BNSF for coverage under policies issued to BNSF satisfy the requirements of 11 U.S.C. § 524(g)(4)(A). Section 524(g)(4)(A)(iii) provides that the channeling injunction can extend to claims made against insurers “arising by reason” of their “provision of insurance to the debtor or a related party.” The insurers here provided insurance to BNSF, not the Debtors.

32. Because the insurers are not entitled to an injunction enjoining the claims by the express terms of Section 524(g)(A), such an injunction cannot be otherwise supported by resort to the court's "general equitable powers" under 11 U.S.C. § 105(a). *In re Combustion Engineering, Inc.*, 391 F. 3d 190, 233-38 (3d Cir. 2005).

B. The Plan Cannot Enjoin BNSF From Pursing Its Contractual Insurance Rights Under Policies Issued to Grace.

33. Likewise, the Plan cannot abrogate and enjoin BNSF's contractual rights as a specifically-named additional assured under the policies issued to Grace. See *In re Forty-Eight Insulations, Inc.*, 133 B.R. 973 (Bankr. N.D. Ill. 1991) (holding that contractual rights of named insureds cannot be enjoined by bankruptcy court).

34. As set forth above, based upon discovery completed to date, BNSF has rights in the insurance policies issued to Grace, as a named additional insured, and at least as to some of those policies, the insurers' obligations to BNSF do not deplete the primary policy proceeds available to Grace.

35. In addition, each of the insurance agreements include a duty to defend BNSF as an additional insured. The performance of this duty to defend will in no way affect the estate of the Debtors or reduce any benefits to which the Debtors are entitled under the terms of the policy.

36. The scope of the duty to indemnify or duty to defend in these situations will be governed by the law of the State of Montana. *Kemp v. Allstate Ins. Co.*, 193 Mont. 526, 601 P. 2d 20 (1979); *Mitchell v. State Farm Ins. Co.*, 2003 MT 102, 315 Mont. 281, 68 P. 3d 703. The law of the state of performance of an insurance contract controls as to its legal

construction and effect. *Id.* The place of performance of a contract is the place where the insured is entitled to receive benefits. *Id.*

37. In Montana, the duty to defend an insured under a liability policy is independent from and broader than a duty to indemnify. *Farmers Union Mut. Ins. Co. v. Rumph*, 2007 MT 249 ¶ 14, 339 Mont. 251, 170 P. 3d 974.

38. This duty to defend is independent of any duties owed to the Debtors and cannot be waived by any entity other than the additional insured, in this case BNSF.

39. None of the policies or endorsements at issue reduce the indemnity benefits by loss-adjusting expenses or defense costs. As a result, BNSF's enforcement of the insurer's duty to defend BNSF by virtue of its status as an additional insured will not deplete the policy benefits otherwise available to the Debtors.

40. Because the duty to defend is independent from the duty to indemnify, no agreement between the insurer and its named insured can affect that additional insured status with regard to the duty to defend.

41. Because BNSF is the express beneficiary of endorsements to Grace's insurance policies, Section 524(g) cannot be used to eliminate BNSF's direct contractual rights against the insurers. See *In re Johns-Manville Corp.*, 517 F. 3d 52.⁴ Even if this Court were to rule that Section 524(g) can extend to protect *shared* proceeds under such policies, it cannot be

⁴ Because BNSF has express contractual rights as an additional assured, claims asserting such rights do not "arise by reason of" the insurers "provision of insurance to the Debtors." Accordingly, Section 524(g)(4)(A)(iii) does not authorize the extension of the channeling injunction to include such claims. In any event, Section 524(g)(4)(A)(iii) cannot be read to extend the injunction to rights of BNSF that do not affect the rights of Grace to recover under the policy. Since BNSF's rights do not diminish the policy proceeds otherwise available to Grace, BNSF's rights must be protected. See *In re Johns-Manville Corp.*, 517 F. 3d 52 (distinguishing cases where courts have "related to" jurisdiction because policy proceeds are shared with the debtor).

used to protect policy proceeds or defense cost obligations that do not erode the policy limits available to Grace. *See Id.*

42. Nor does the Plan satisfy the minimal requirements for a non-consensual release of third-party claims. In *In re Continental Airlines*, 203 F. 3d 203 (3d Cir. 2000), the Court of Appeals for the Third Circuit recognized that courts generally take one of three approaches to third-party releases: (a) they are never permitted; (b) they are permissible only with the express consent of the non-debtor party whose claims are released; or (c) the release is fair and equitable, given in exchange for fair consideration, and is necessary for the reorganization.

Id. at 214.

43. BNSF does not consent to the release of its contractual claims against the insurers. Accordingly, the injunctions fail under this standard. The injunctions further fail under the more lenient standard, as neither the settled nor the non-settled insurers have provided any consideration for the injunction, and in particular, have not provided any consideration for abrogating BNSF's express contractual rights.⁵

44. Furthermore, BNSF holds a property interest in the insurance policies, which the Plan purports to eliminate without just compensation to BNSF for release of the insurers' obligations. Approving the Plan would violate BNSF's due process rights and constitute a taking of its property without just compensation. U.S. Const., am. 5.

C. The Asbestos Insurance Entity Injunction is Impermissible

⁵ Nor can the Plan Proponents demonstrate that the extension of the injunctions against BNSF's contractual claims are necessary for the reorganization. The various settlement agreements entered into by Grace with MCC and Arrowood were entered into more than a decade ago, and without BNSF's consent or participation. No additional consideration is being provided by Arrowood or MCC to the Asbestos PI Trust.

45. The Plan includes an “Asbestos Insurance Entity Injunction,” that enjoins any third-party actions against non-settling Asbestos Insurance Entities. The Plan Proponents assert that this injunction is necessary to protect the value of the insurance policy proceeds.

46. In *Combustion Engineering*, the Court of Appeals stated that

The general grant of equitable power contained in § 105(a) cannot trump specific provisions of the Bankruptcy Code, and must be exercised within the parameters of the Code itself. . . . When the Bankruptcy Code provides a specified means for a debtor to obtain a specific form of equitable relief, those standards and procedures must be observed.

391 F. 3d at 236. The Court concluded that, where the requirements for a Section 524(g) injunction have not been met, the plan cannot provide for an injunction supported solely by the thread of Section 105. *Id.*; *In re Congoleum Corp.*, 362 B.R. 198, 201 (Bankr. D.N.J. 2007).

47. Enjoining all third-party actions against non-settling insurers and granting the Asbestos PI Trust the authority to settle any claims against the insurers circumvents the requirement that the injunction afforded under Section 524(g) be examined by the Court and determined to be fair and equitable to future demand holders. See 11 U.S.C. § 524(g)(4)(B)(ii).

D. The Channeling Injunction is Not Fair and Equitable

48. The Bankruptcy Code requires that the Plan be fair and equitable in light of the benefits the insurers are providing to the trust. 11 U.S.C. §524(g)(4)(B)(ii); *In re Congoleum Corp.*, 362 B.R. 167, 179 & 181 (Bankr. D.N.J. 2007).

49. While the courts have not defined the phrase “fair and equitable” in the context of Section 524(g), a “review of the case law suggests that finding that an injunction is fair and equitable is closely tied to the value being contributed to the plan.” *Id.*

50. In the present case, none of the Settled Asbestos Insurers are providing any contribution to the Plan. Although the insurers entered into settlement agreements more than a

decade ago, and have purportedly made payments pursuant to those settlement agreements to the Debtors prior to the bankruptcy proceeding, no contributions are being made by the insurers to the Asbestos PI Trust. As such, the extension of the channeling injunction to the Settled Asbestos Insurers is inappropriate.

51. Furthermore, there has been no contribution made by any insurer in exchange for the release of BNSF's express contractual rights. It is fundamentally unfair and inequitable for the insurers to obtain broad injunctive relief, effectively releasing BNSF's contractual rights, without providing a contribution to BNSF for such release.⁶

E. The Plan Cannot Be Confirmed Because it Does Not Extend the Channeling Injunction to All Derivative Claims

52. The Section 524(g) channeling injunction must extend to derivative claims asserted against BNSF, because any act to recover on such claims against BNSF would constitute an indirect attempt to collect, recover or receive payment with respect to a claim or demand that, under the Plan will to be paid in whole or in part by the Asbestos PI Trust. 11 U.S.C. § 524(g)(1)(B).

53. In *In re Combustion Engineering, Inc.*, the Court of Appeals stated:

The Bankruptcy Court entered a channeling injunction under § 524(g) in favor of Combustion Engineering *and also in favor of Basic and Lummus* for their derivative asbestos-related claims. The court correctly found that §524(g) did not authorize a channeling injunction over the independent, non-derivative third-party actions against non-debtors Basic and Luumus.

⁶Even if this Court were to find that the contribution made by the Debtors to the Asbestos PI Trust includes a contribution on behalf of the Settled Asbestos Insurers, and that such apportioned contribution is fair and equitable in connection with the injunction relating to asbestos personal injury plaintiffs, it is not fair and equitable in relation to BNSF's future demands. BNSF has separate claims against the insurers that would not dilute the proceeds available to the Debtors and to which the Debtors' asbestos plaintiffs could not share. As such, the portion of the contribution attributable to the release of BNSF's claims against any Settled Asbestos Insurer must be preserved solely for the benefit of BNSF.

391 F.3d at 233 (emphasis added).

54. This distinguishes derivative claims (as asserted by claimants in the first instance against BNSF), from independent, non-derivative claims as proscribed by *Combustion Engineering*.

55. The need for the channeling injunction is manifest in a review of the Asbestos PI TDP. The Asbestos PI TDP provides that the Trust is to obtain a release from claimants that would both maximize their ability to recover from third parties while not increasing the amount of indemnification or contribution claims against the Trust. While it is possible that a party, such as BNSF, may have a right to indemnification from the Trust for non-derivative claims asserted against it, the vast majority of claims for contribution or indemnity will arise from derivative claims.

F. The Asbesots PI Trust Distribution Procedures Are Not Fair and Equitable.

56. The Asbestos PI TDP does not adequately protect the rights of Indirect PI Trust Claimholders such as BNSF.

57. Specifically, the Asbestos PI TDP does not provide for the full allowance of all claims to which an Indirect PI Trust Claimholder is entitled. The Asbestos PI TDP limits the allowable amount of the claim paid to the underlying asbestos plaintiff, without inclusion of attorneys fees or other defense costs.

58. The Asbestos PI TDP further requires the Indirect PI Trust Claimant to obtain a full release from the underlying asbestos creditor in order to be granted an allowed claim. Although the Asbestos PI TDP permits the Indirect PI Trust Claimant to engage in non-binding or binding arbitration or to take their claim to the tort system if it does not obtain such a

release, the increased costs incurred in this tortured and bureaucratic process for proving a claim is not justified.

59. In addition, the Asbestos PI TDP provides for a “maximum value” for all Asbestos PI Claims, including Indirect PI Trust Claims. To the extent a judgment is entered against an Indirect PI Trust Claimholder in an amount in excess of the maximum value, the Asbestos PI TDP provides that the “fast track” offer must be no greater than the maximum value. Likewise, in the alternative dispute resolution process, which must be resorted to in the first instance if the Indirect PI Trust Claimholder rejects the offer, the arbitrator is likewise limited to the maximum value provided by the Asbestos PI TDP. Therefore, an Indirect PI Trust Claimholder, who has a judgment entered against it, will nevertheless be forced to participate in non-binding mediation, and then resort to a suit in the tort system, to obtain a judgment against the Asbestos PI Trust in the amount of its already-liquidated claim.

60. The Asbestos PI Trust appoints the attorneys for the underlying asbestos claimholders as the Trustees, pragmatically resulting in an impermissible conflict of interest.

61. The Asbestos PI TDP does not adequately provide for the payment of insurance claims, and does not include any mechanism by which holders of rights against insurance policies issued by non-settling insurers can recover on such claims.

G. The Plan Violates the Absolute Priority Rule

62. Because general unsecured creditors are receiving payment in full, and equity holders are maintaining their interest, the Plan will violate the absolute priority rule if any class of claims votes to reject it. *See Bank of America Nat. Trust and Sav. Ass'n v. 203 North LaSalle Street Partnership*, 526 U.S. 434, 119 S. Ct. 1411 (1999).

63. Indirect PI Trust Claims are not substantially similar to the underlying asbestos claims, and because the Plan provides for discriminatory treatment of such claims, Indirect PI Trust Claims should be classified separately for voting purposes.

64. If the Indirect PI Trust Claims – or any other plan class – vote to reject the Plan, the absolute priority rule will preclude confirmation as a matter of law.

WHEREFORE, BNSF respectfully requests that this Court deny confirmation of the Plan.

Dated: May 20, 2009
Wilmington, DE

PEPPER HAMILTON LLP

/s/ John H. Schanne, II
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Counsel for BNSF Railway Company

EXHIBIT A

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XXX-000737

DETROIT INSURANCE COMPANY

111 N. GRAND AVENUE DETROIT, MICHIGAN

Mr. James C. Kennedy
Land and Tax Commissioner
Lease Division
Great Northern Railway Company
St. Paul 1, Minnesota



Dear Mr. Kennedy:

This is in response to your letter of May 3 in which you expressed the opinion that Endorsement 9 of Royal Indemnity Company General Liability Policy RLG 021621 does not fully protect you as provided for in the Permit involving the bridge and conveyor belt at Libby, Montana, used by Zonolite Company. You are correct that the policy you refer to does not fully protect the Great Northern Railway Company. However, your files should contain an additional policy issued by the Royal Indemnity Company numbered RLH 021669, which is issued for the period April 20, 1959 to April 20, 1962, specifically naming the Great Northern Railway Company as the insured and covering the construction, maintenance, use and removal of suspension bridges and conveyors. This obligation has been handled in this manner in a separate policy for many years because of Article 9 of your agreement with Zonolite Company which specifically requires that Zonolite Company provide and pay for a liability policy protecting the Railway Company against loss. It has been our understanding since 1950 that this method of providing for the Great Northern Railway was satisfactory. If there is some other arrangement you wish us to make we will be most happy to do so.

In reviewing Policy RLH 021669, I note that the word "contraction" has been used rather than the word "construction". We will prepare an endorsement correcting the word "contraction" to read "construction" and forward the endorsement on to you.

Yours very truly,

J. L. Toot
Account Executive

JLT:ed

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EXHIBIT B

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XXX-000739

SA-919

JCG 11 1954 ENDORSEMENT

This endorsement is attached to and hereby made part of the Policy designated below and is effective as of the date and hour indicated (standard time at the address of the named insured as stated in the Policy).

POWELL NUMBER	NAME OF COMPANY	EXPIRE (Month Day Year)
RIG 1160	Zonolite Company	TYPE DATE March 31, 1994
NAME OF INSURANCE		EXPIRE TYPE
Zonolite Company		12:01 A.M. 12:00 NOON
PRODUCED		PRODUCED BY DATE NUMBER

In consideration of an additional premium charged the Company agrees to assume the liability for bodily injuries including resulting death and for damage to property, which liability the insured has assumed by virtue of the following wording contained in a contract entered into between the insured and Great Northern Railway Company, dated April 20, 1950 and supplemental agreements dated 10-12-50 and 4-25-52 in connection with suspension bridge and conveyor belt, as follows:

The applicant shall, and hereby does, release and discharge the Railway Company of and from any and all liability for damage to or destruction of the said suspension bridge and conveyor belt and all other property of the applicant located upon said premises, however such damage or destruction may occur or be caused. The applicant shall, and hereby does, further agree to indemnify and hold harmless the Railway Company of and from any and all liability, damage, recoveries, judgments, cost, expense or other charges and demands, on account of injuries to or death of one or more persons, or damage to or destruction of the property of one or more persons (including the property of the Railway Company) resulting from or during the construction, repair, maintenance or operation of said bridge and conveyor belt, or resulting from or during the use of said premises by the applicant, the applicant's agents, servants, employees, patrons or customers, or by any other persons, whether caused by the negligence of the Railway Company, its agents, servants and employees, or otherwise. The applicant further agrees to appear and defend in the name of the Railway Company any suits or actions at law brought against it on account of any such personal injuries, death, or damage to property, and to pay and satisfy any final judgment that may be rendered against the Railway Company in any such suit or action. The liability assumed by the applicant herein shall not be affected or diminished by the fact, if it be a fact, that any such suit or action brought against the Railway Company may arise in whole or in part out of the negligence of the Railway Company, its officers, agents, servants or employees, or be contributed to in whole or in part by such negligence. The foregoing language of this section 6 shall not be construed as imposing on the applicant liability for any loss or damage to persons or property which would have occurred in the absence of the construction, repair, maintenance, operation or existence of the said suspension bridge, conveyor belt

Nothing herein contained shall be held to waive, alter, vary or extend any of the terms or provisions of this Policy except as herein stated, nor shall this endorsement bind the Company unless countersigned by a duly authorized representative of the Company.

Comments by:

DEPARTMENT OF DEFENSE AGENCY

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Amia

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SA-920

ENDORSEMENT

This endorsement is attached to and hereby made part of the Policy designated below and is effective as of the date and hour indicated (standard time at the address of the named insured as stated in the Policy).

POLICY NUMBER 510 11840	NAME OF COMPANY Royal Indemnity Company	TIME: <input type="checkbox"/> Morning <input checked="" type="checkbox"/> Afternoon DATE: March 11, 1954
NAME INSURED Zonolite Company		EXPIRATION TIME: <input checked="" type="checkbox"/> 12:01 <input type="checkbox"/> 1:00 Hour: <input checked="" type="checkbox"/> A.M. <input type="checkbox"/> P.M. PRODUCED COPY RUBBED

(Continued) and loading dock and their appurtenances upon the property of the Railway Company.

This endorsement is issued subject to all agreements, exclusions, conditions, declarations, and other terms contained in the policy, except as modified by this endorsement.

Nothing herein contained shall be held to waive, alter, vary or extend any of the terms or provisions of this Policy, except as herein stated, nor shall this endorsement bind the Company unless countersigned by a duly authorized representative of the Company.

Couponsigned by:

DETROIT INSURANCE AGENCY

S. D. Dugay
S. D. Dugay
Authorized Representative

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FOR OFFICE USE ONLY									
LINE	FORM	STATEMENT	BLDG	CLASS	LIMITS	EXPIRATION	TIME	EFFECTIVE DATE	0-12 12-24 24-36 36-48 48-60 60-72 72-84 84-96 96-108 108-120 120-132 132-144 144-156 156-168 168-180 180-192 192-204 204-216 216-228 228-240 240-252 252-264 264-276 276-288 288-300 300-312 312-324 324-336 336-348 348-360 360-372 372-384 384-396 396-408 408-420 420-432 432-444 444-456 456-468 468-480 480-492 492-504 504-516 516-528 528-540 540-552 552-564 564-576 576-588 588-596 596-608 608-616 616-624 624-632 632-640 640-648 648-656 656-664 664-672 672-680 680-688 688-696 696-704 704-712 712-720 720-728 728-736 736-744 744-752 752-760 760-768 768-776 776-784 784-792 792-800 800-808 808-816 816-824 824-832 832-840 840-848 848-856 856-864 864-872 872-880 880-888 888-896 896-904 904-912 912-920 920-928 928-936 936-944 944-952 952-960 960-968 968-976 976-984 984-992 992-1000 1000-1008 1008-1016 1016-1024 1024-1032 1032-1040 1040-1048 1048-1056 1056-1064 1064-1072 1072-1080 1080-1088 1088-1096 1096-1104 1104-1112 1112-1120 1120-1128 1128-1136 1136-1144 1144-1152 1152-1160 1160-1168 1168-1176 1176-1184 1184-1192 1192-1200 1200-1208 1208-1216 1216-1224 1224-1232 1232-1240 1240-1248 1248-1256 1256-1264 1264-1272 1272-1280 1280-1288 1288-1296 1296-1304 1304-1312 1312-1320 1320-1328 1328-1336 1336-1344 1344-1352 1352-1360 1360-1368 1368-1376 1376-1384 1384-1392 1392-1400 1400-1408 1408-1416 1416-1424 1424-1432 1432-1440 1440-1448 1448-1456 1456-1464 1464-1472 1472-1480 1480-1488 1488-1496 1496-1504 1504-1512 1512-1520 1520-1528 1528-1536 1536-1544 1544-1552 1552-1560 1560-1568 1568-1576 1576-1584 1584-1592 1592-1600 1600-1608 1608-1616 1616-1624 1624-1632 1632-1640 1640-1648 1648-1656 1656-1664 1664-1672 1672-1680 1680-1688 1688-1696 1696-1704 1704-1712 1712-1720 1720-1728 1728-1736 1736-1744 1744-1752 1752-1760 1760-1768 1768-1776 1776-1784 1784-1792 1792-1800 1800-1808 1808-1816 1816-1824 1824-1832 1832-1840 1840-1848 1848-1856 1856-1864 1864-1872 1872-1880 1880-1888 1888-1896 1896-1904 1904-1912 1912-1920 1920-1928 1928-1936 1936-1944 1944-1952 1952-1960 1960-1968 1968-1976 1976-1984 1984-1992 1992-2000 2000-2008 2008-2016 2016-2024 2024-2032 2032-2040 2040-2048 2048-2056 2056-2064 2064-2072 2072-2080 2080-2088 2088-2096 2096-2104 2104-2112 2112-2120 2120-2128 2128-2136 2136-2144 2144-2152 2152-2160 2160-2168 2168-2176 2176-2184 2184-2192 2192-2200 2200-2208 2208-2216 2216-2224 2224-2232 2232-2240 2240-2248 2248-2256 2256-2264 2264-2272 2272-2280 2280-2288 2288-2296 2296-2304 2304-2312 2312-2320 2320-2328 2328-2336 2336-2344 2344-2352 2352-2360 2360-2368 2368-2376 2376-2384 2384-2392 2392-2400 2400-2408 2408-2416 2416-2424 2424-2432 2432-2440 2440-2448 2448-2456 2456-2464 2464-2472 2472-2480 2480-2488 2488-2496 2496-2504 2504-2512 2512-2520 2520-2528 2528-2536 2536-2544 2544-2552 2552-2560 2560-2568 2568-2576 2576-2584 2584-2592 2592-2600 2600-2608 2608-2616 2616-2624 2624-2632 2632-2640 2640-2648 2648-2656 2656-2664 2664-2672 2672-2680 2680-2688 2688-2696 2696-2704 2704-2712 2712-2720 2720-2728 2728-2736 2736-2744 2744-2752 2752-2760 2760-2768 2768-2776 2776-2784 2784-2792 2792-2800 2800-2808 2808-2816 2816-2824 2824-2832 2832-2840 2840-2848 2848-2856 2856-2864 2864-2872 2872-2880 2880-2888 2888-2896 2896-2904 2904-2912 2912-2920 2920-2928 2928-2936 2936-2944 2944-2952 2952-2960 2960-2968 2968-2976 2976-2984 2984-2992 2992-3000 3000-3008 3008-3016 3016-3024 3024-3032 3032-3040 3040-3048 3048-3056 3056-3064 3064-3072 3072-3080 3080-3088 3088-3096 3096-3104 3104-3112 3112-3120 3120-3128 3128-3136 3136-3144 3144-3152 3152-3160 3160-3168 3168-3176 3176-3184 3184-3192 3192-3200 3200-3208 3208-3216 3216-3224 3224-3232 3232-3240 3240-3248 3248-3256 3256-3264 3264-3272 3272-3280 3280-3288 3288-3296 3296-3304 3304-3312 3312-3320 3320-3328 3328-3336 3336-3344 3344-3352 3352-3360 3360-3368 3368-3376 3376-3384 3384-3392 3392-3400 3400-3408 3408-3416 3416-3424 3424-3432 3432-3440 3440-3448 3448-3456 3456-3464 3464-3472 3472-3480 3480-3488 3488-3496 3496-3504 3504-3512 3512-3520 3520-3528 3528-3536 3536-3544 3544-3552 3552-3560 3560-3568 3568-3576 3576-3584 3584-3592 3592-3600 3600-3608 3608-3616 3616-3624 3624-3632 3632-3640 3640-3648 3648-3656 3656-3664 3664-3672 3672-3680 3680-3688 3688-3696 3696-3704 3704-3712 3712-3720 3720-3728 3728-3736 3736-3744 3744-3752 3752-3760 3760-3768 3768-3776 3776-3784 3784-3792 3792-3800 3800-3808 3808-3816 3816-3824 3824-3832 3832-3840 3840-3848 3848-3856 3856-3864 3864-3872 3872-3880 3880-3888 3888-3896 3896-3904 3904-3912 3912-3920 3920-3928 3928-3936 3936-3944 3944-3952 3952-3960 3960-3968 3968-3976 3976-3984 3984-3992 3992-4000 4000-4008 4008-4016 4016-4024 4024-4032 4032-4040 4040-4048 4048-4056 4056-4064 4064-4072 4072-4080 4080-4088 4088-4096 4096-4104 4104-4112 4112-4120 4120-4128 4128-4136 4136-4144 4144-4152 4152-4160 4160-4168 4168-4176 4176-4184 4184-4192 4192-4200 4200-4208 4208-4216 4216-4224 4224-4232 4232-4240 4240-4248 4248-4256 4256-4264 4264-4272 4272-4280 4280-4288 4288-4296 4296-4304 4304-4312 4312-4320 4320-4328 4328-4336 4336-4344 4344-4352 4352-4360 4360-4368 4368-4376 4376-4384 4384-4392 4392-4400 4400-4408 4408-4416 4416-4424 4424-4432 4432-4440 4440-4448 4448-4456 4456-4464 4464-4472 4472-4480 4480-4488 4488-4496 4496-4504 4504-4512 4512-4520 4520-4528 4528-4536 4536-4544 4544-4552 4552-4560 4560-4568 4568-4576 4576-4584 4584-4592 4592-4600 4600-4608 4608-4616 4616-4624 4624-4632 4632-4640 4640-4648 4648-4656 4656-4664 4664-4672 4672-4680 4680-4688 4688-4696 4696-4704 4704-4712 4712-4720 4720-4728 4728-4736 4736-4744 4744-4752 4752-4760 4760-4768 4768-4776 4776-4784 4784-4792 4792-4800 4800-4808 4808-4816 4816-4824 4824-4832 4832-4840 4840-4848 4848-4856 4856-4864 4864-4872 4872-4880 4880-4888 4888-4896 4896-4904 4904-4912 4912-4920 4920-4928 4928-4936 4936-4944 4944-4952 4952-4960 4960-4968 4968-4976 4976-4984 4984-4992 4992-5000 5000-5008 5008-5016 5016-5024 5024-5032 5032-5040 5040-5048 5048-5056 5056-5064 5064-5072 5072-5080 5080-5088 5088-5096 5096-5104 5104-5112 5112-5120 5120-5128 5128-5136 5136-5144 5144-5152 5152-5160 5160-5168 5168-5176 5176-5184 5184-5192 5192-5200 5200-5208 5208-5216 5216-5224 5224-5232 5232-5240 5240-5248 5248-5256 5256-5264 5264-5272 5272-5280 5280-5288 5288-5296 5296-5304 5304-5312 5312-5320 5320-5328 5328-5336 5336-5344 5344-5352 5352-5360 5360-5368 5368-5376 5376-5384 5384-5392 5392-5400 5400-5408 5408-5416 5416-5424 5424-5432 5432-5440 5440-5448 5448-5456 5456-5464 5464-5472 5472-5480 5480-5488 5488-5496 5496-5504 5504-5512 5512-5520 5520-5528 5528-5536 5536-5544 5544-5552 5552-5560 5560-5568 5568-5576 5576-5584 5584-5592 5592-5600 5600-5608 5608-5616 5616-5624 5624-5632 5632-5640 5640-5648 5648-5656 5656-5664 5664-5672 5672-5680 5680-5688 5688-5696 5696-5704 5704-5712 5712-5720 5720-5728 5728-5736 5736-5744 5744-5752 5752-5760 5760-5768 5768-5776 5776-5784 5784-5792 5792-5800 5800-5808 5808-5816 5816-5824 5824-5832 5832-5840 5840-5848 5848-5856 5856-5864 5864-5872 5872-5880 5880-5888 5888-5896 5896-5904 5904-5912 5912-5920 5920-5928 5928-5936 5936-5944 5944-5952 5952-5960 5960-5968 5968-5976 5976-5984 5984-5992 5992-6000 6000-6008 6008-6016 6016-6024 6024-6032 6032-6040 6040-6048 6048-6056 6056-6064 6064-6072 6072-6080 6080-6088 6088-6096 6096-6104 6104-6112 6112-6120 6120-6128 6128-6136 6136-6144 6144-6152 6152-6160 6160-6168 6168-6176 6176-6184 6184-6192 6192-6200 6200-6208 6208-6216 6216-6224 6224-6232 6232-6240 6240-6248 6248-6256 6256-6264 6264-6272 6272-6280 6280-6288 6288-6296 6296-6304 6304-6312 6312-6320 6320-6328 6328-6336 6336-6344 6344-6352 6352-6360 6360-6368 6368-6376 6376-6384 6384-6392 6392-6400 6400-6408 6408-6416 6416-6424 6424-6432 6432-6440 6440-6448 6448-6456 6456-6464 6464-6472 6472-6480 6480-6488 6488-6496 6496-6504 6504-6512 6512-6520 6520-6528 6528-6536 6536-6544 6544-6552 6552-6560 6560-6568 6568-6576 6576-6584 6584-6592 6592-6600 6600-6608 6608-6616 6616-6624 6624-6632 6632-6640 6640-6648 6648-6656 6656-6664 6664-6672 6672-6680 6680-6688 6688-6696 6696-6704 6704-6712 6712-6720 6720-6728 6728-6736 6736-6744 6744-6752 6752-6760 6760-6768 6768-6776 6776-6784 6784-6792 6792-6800 6800-6808 6808-6816 6816-6824 6824-6832 6832-6840 6840-6848 6848-6856 6856-6864 6864-6872 6872-6880 6880-6888 6888-6896 6896-6904 6904-6912 6912-6920 6920-6928 6928-6936 6936-6944 6944-6952 6952-6960 6960-6968 6968-6976 6976-6984 6984-6992 6992-7000 7000-7008 7008-7016 7016-7024 7024-7032 7032-7040 7040-7048 7048-7056 7056-7064 7064-7072 7072-7080 7080-7088 7088-7096 7096-7104 7104-7112 7112-7120 7120-7128 7128-7136 7136-7144 7144-7152 7152-7160 7160-7168 7168-7176 7176-7184 7184-7192 7192-7200 7200-7208 7208-7216 7216-7224 7224-7232 7232-7240 7240-7248 7248-7256 7256-7264 7264-7272 7272-7280 7280-7288 7288-7296 7296-7304 7304-7312 7312-7320 7320-7328 7328-7336 7336-7344 7344-7352 7352-7360 7360-7368 7368-7376 7376-7384 7384-7392 7392-7400 7400-7408 7408-7416 7416-7424 7424-7432 7432-7440 7440-7448 7448-7456 7456-7464 7464-7472 7472-7480 7480-7488 7488-7496 7496-7504 7504-7512 7512-7520 7520-7528 7528-7536 7536-7544 7544-7552 7552-7560 7560-7568 7568-7576 7576-7584 7584-7592 7592-7600 7600-7608 7608-7616 7616-7624 7624-7632 7632-7640 7640-7648 7648-7656 7656-7664 7664-7672 7672-7680 7680-7688 7688-7696 7696-7704 7704-7712 7712-7720 7720-7728 7728-7736 7736-7744 77

EXHIBIT C

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SA-1725



CONTRACTUAL LIABILITY ENDORSEMENT END. NO. 11

This endorsement is issued for attachment to and is hereby made a part of the policy designated below and is effective at or the date indicated at 12:01 A.M. standard time at the address of the named insured as stated in the policy.

Policy No. RLG 021622	Name of Company ROYAL INDEMNITY COMPANY	Endorsement (Name, Div. Type) Effective April 1, 1962 Date
Insured FEDOCYTE COMPANY, ET AL		Additional Premium \$ INCLUDED
Producer	Present Case Number	

Counter-signed by DETROIT INSURANCE AGENCY

J. H. Stelle
Authorized Representative

It is agreed that such Contractual Liability insurance as is afforded by the policy for Bodily Injury Liability and for Property Damage Liability also applies to the liability assumed by the named insured under that part of a contract between the named insured and GREAT NORTHERN RAILWAY COMPANY dated APRIL 20, 1950 reading as follows:

SUPPLEMENTED BY 10-12-50 AND 4-25-52 AGREEMENTS

THE APPLICANT SHALL, AND HEREBY DOES, RELEASE AND DISCHARGE THE RAILWAY COMPANY OF AND FROM ANY AND ALL LIABILITY FOR DAMAGE TO OR DESTRUCTION OF THE SAID SUSPENSION BRIDGE AND CONVEYOR BELT AND ALL OTHER PROPERTY OF THE APPLICANT LOCATED UPON SAID PREMISES, HOWEVER SUCH DAMAGE OR DESTRUCTION MAY OCCUR OR BE CAUSED. THE APPLICANT SHALL, AND HEREBY DOES, FURTHER AGREE TO INDEMNIFY AND HOLD HARMLESS THE RAILWAY COMPANY OF AND FROM ANY AND ALL LIABILITY, DAMAGE, RECOVERIES, JUDGMENTS, COST, EXPENSE OR OTHER CHARGES AND DEMANDS, ON ACCOUNT OF INJURIES TO OR DEATH OF ONE OR MORE PERSONS, OR DAMAGE TO OR DESTRUCTION OF THE PROPERTY OF ONE OR MORE PERSONS (INCLUDING THE PROPERTY OF THE RAILWAY COMPANY) RESULTING FROM OR DURING THE CONSTRUCTION, REPAIR, MAINTENANCE OR OPERATION OF SAID BRIDGE AND CONVEYOR BELT, OR RESULTING FROM OR DURING THE USE OF SAID PREMISES

LOCATION: LIBRET, MONTANA

(CONTINUED ON REVERSE SIDE)

The insurance afforded under this endorsement is only with respect to such and so many of the following coverages as are selected by specific limits of liability.

Coverage	Limits of Liability
Bodily Injury Liability	\$ 200,000.00
Per Person	\$ 500,000.00
Property Damage Liability	\$ 500,000.00
Per Accident	\$ 500,000.00
	Aggregate
Designation of Contract:	Premium Basis
GREAT NORTHERN RAILWAY CO. DATED 4-20-50 AND SUPPLEMENTAL AGREEMENTS DATED 10-12-50 AND 4-25-52 IN CONNECTION WITH SUSPENSION BRIDGE AND CONVEYOR BELT.	Rates
0521 ONE	48.60 52.50
Minimum Premiums - B.I.S.	Total Advance Premiums
F.D.S.	48.60 52.50
	48.60 52.50

The other provisions of this endorsement are printed on the back of this sheet.

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DESCRIPTION	CLASS	CLASS	LIMITS	PERIOD	EFFECTIVE DATE	EXPIRATION DATE	P.R.	P.R.	APPROVED BY INSURER
0521 ONE									EXPIRY STAMP

021622-100-3-53

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SA-1726

Notwithstanding anything to the contrary contained in the contract referred to herein, it is agreed between the company and the named insured that the insurance provided by this endorsement does not apply:

1. To injuries to persons, including death, or to damage to or destruction of property, including the loss of use thereof, which are excluded by the printed terms, conditions and exclusions of the policy or any printed addendum thereto, unless such terms, conditions and exclusions are specifically amended by this endorsement by wording other than that contained in the contract referred to herein;
2. To any action on a contract by a person not a party thereto;
3. To damages awarded in any arbitration proceedings:
 - (a) involving questions of policy coverage;
 - (b) in which the company is given no part in the selection of the arbitrators and in the arbitration proceedings, or
 - (c) which are not confined to disputes between the parties to the contract referred to herein;
4. To injury, sickness, disease, death or destruction due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;
5. In liability for the sale, gift, distribution or use of any alcoholic beverage.

The premium with respect to which "cost" is the basis, is an estimated premium only. Upon termination of this endorsement, the earned premium shall be computed in accordance with the company's rules, rates, rating plans, premiums and maximum premiums applicable to this insurance. If the earned premium thus computed exceeds the estimated advance premium paid, the named insured shall pay the excess to the company; if less, the company shall return to the named insured the unearned premium paid by such insured.

When used as a premium basis the word "cost" means the total cost to any indemnitee of all work let or subcontracted in connection with each specific project, including the cost of all labor, materials and equipment furnished, used or delivered free use in the execution of such work, whether furnished by the owner, contractor or subcontractor, including all fees, allowances, bonuses or commissions thereon, paid or due.

Nothing herein contained shall be held to waive, alter, vary or extend any of the terms or provisions of the policy, except as herein stated, nor shall this endorsement bind the company unless countersigned by a duly authorized representative of the company.


President

BY THE APPLICANT, THE APPLICANT'S AGENTS, SERVANTS, EMPLOYEES, PATRONS OR CUSTOMERS, OR BY ANY OTHER PERSONS, WHETHER CAUSED BY THE NEGLIGENCE OF THE RAILWAY COMPANY, ITS AGENTS, SERVANTS AND EMPLOYEES, OR OTHERWISE. THE APPLICANT FURTHER AGREES TO APPEAR AND DEFEND IN THE NAME OF THE RAILWAY COMPANY ANY SUITS OR ACTIONS AT LAW BROUGHT AGAINST IT ON ACCOUNT OF ANY SUCH PERSONAL INJURIES, DEATH, OR DAMAGE TO PROPERTY AND TO PAY AND SATISFY ANY FINAL JUDGMENT THAT MAY BE RENDERED AGAINST THE RAILWAY COMPANY IN ANY SUCH SUIT OR ACTION. THE LIABILITY ASSUMED BY THE APPLICANT HEREIN SHALL NOT BE AFFECTED OR DIMINISHED BY THE FACT, IF IT BE A FACT, THAT ANY SUCH SUIT OR ACTION BROUGHT AGAINST THE RAILWAY COMPANY MAY ARISE IN WHOLE OR IN PART OUT OF THE NEGLIGENCE OF THE RAILWAY COMPANY, ITS OFFICERS, AGENTS, SERVANTS OR EMPLOYEES, OR BE CONTRIBUTED TO IN WHOLE OR IN PART BY SUCH NEGLIGENCE. THE FOREGOING LANGUAGE OF THIS SECTION 8 SHALL NOT BE CONSTRUED AS IMPOSING ON THE APPLICANT LIABILITY FOR ANY LOSS OR DAMAGE TO PERSONS OR PROPERTY WHICH WOULD HAVE OCCURRED IN THE ABSENCE OF THE CONSTRUCTION, REPAIR, MAINTENANCE, OPERATION OR EXISTENCE OF THE SAID SUSPENSION BRIDGE, CONVEYOR BELT AND LOADING DOCK AND THEIR APPURTENANCES UPON THE PROPERTY OF THE RAILWAY COMPANY.

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XXX-000744

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:) Chapter 11
)
W.R. GRACE & CO., et al.,) Case No. 01-1139 (JKF)
)
 Debtors.) Jointly Administered
)
_____)

CERTIFICATE OF SERVICE

I, John H. Schanne, II, do hereby certify that on the 20th day of May, 2009, I did serve BNSF Railway Company's Objections To Confirmation Of The First Amended Chapter 11 Plan Of W.R. Grace & Co., et al., The Official Committee Of Asbestos Personal Injury Claimants, The Asbestos PI Future Claimants' Representative, And The Official Committee Of Equity Security Holders dated February 3, 2009 by causing a true and correct copy thereof to be served by hand delivery upon the entities listed on **Exhibit A**, attached hereto, and by facsimile and first class mail, postage prepaid, upon the entities listed on **Exhibit B**, attached hereto.

/s/ John H. Schanne, II
John H. Schanne (DE No. 4581)

EXHIBIT A – SERVICE BY HAND DELIVERY

Laura Davis Jones/James E. O'Neil
Pachulski, Stang, Ziehl, & Jones LLP
919 North Market Street, 17th Floor
Wilmington, DE 19899
(Counsel to Debtors)

Michael B. Joseph, Esquire
Theodore J. Tacconelli, Esquire
Ferry & Joseph, P.A.
824 Market Street, Suite 904
Wilmington, DE 19899
(Counsel to Asbestos PD Committee)

Teresa K.D. Currier, Esquire
Buchanan Ingersoll & Rooney PC
1000 West Street, Suite 1410
Wilmington, DE 19899-1397
(Counsel to Equity Committee)

Mark S. Chehi, Esquire
Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
P.O. Box 636
Wilmington, DE 19899-0636
(Counsel to Sealed Air Corporation)

Office of the U.S. Trustee
Attn: David Klauder, Esq.
844 King Street, Suite 2207
Wilmington, DE 19801

Marla Eskin, Esquire
Mark Hurford, Esquire
Campbell & Levine, LLC
800 N. King Street, #300
Wilmington, DE 19801
(Counsel to Asbestos PI Committee)

Michael R. Lastowski, Esquire
Duane, Morris & Heckscher LLP
1100 North Market Street, Suite 1200
Wilmington, DE 19801-1246
(Counsel to Official Committee of Unsecured Creditors)

John C. Phillips, Jr., Esquire
Phillips, Goldman & Spence, P.A.
1200 North Broom Street
Wilmington, DE 19806
(Counsel for David T. Austern)

William P. Bowden, Esquire
Amanda M. Winfree, Esquire
Ashby & Geddes, P.A.
500 Delaware Avenue, 8th Floor
Wilmington, DE 19899
(Counsel to Macerich Fresno LP)

EXHIBIT B – SERVICE BY FACSIMILE AND FIRST CLASS MAIL

Debtors

c/o David B. Bernick, P. C.
Theodore L. Freedman, Esquire
Kirkland & Ellis LLP
Citigroup Center
1553 East 53rd Street
New York, NY 10022
Fax: (212) 446-4900

W.R. Grace & Co.

Attn: General Counsel
7500 Grace Drive
Columbia, MD 21044
Fax: (410) 531-4545

Asbestos PI Committee
c/o Peter Van N. Lockwood, Esquire
Ronald Reinsel, Esquire
Caplin & Drysdale, Chartered
One Thomas Circle, N.W.
Suite 1100
Washington, DC 20005
Fax: (202) 862-3301

Asbestos PI Committee
c/o Elihu Inselbuch, Esquire
Caplin & Drysdale, Chartered
375 Park Avenue
35th Floor
New York, NY 10152-3500
Fax: (212) 644-6755

David T. Austern
3110 Fairview Park Drive, Suite 200
Falls Church, VA 22042-0683
Fax: (703) 205-6249

Asbestos PI Future Claimants' Representative
c/o Roger Frankel, Esquire
Orrick, Herrington & Sutcliffe LIP
Columbia Center
1152 15th Street, N.W.
Washington, DC 20005-1706
Fax: (202) 339-8500

Alexander M. Sanders, Jr.
19 Water Street
Charleston, SC 29401
Fax: (843) 953-7570

Asbestos PD Future Claimants' Representative
c/o Alan B. Rich, Esquire
Attorney and Counselor
1401 Elm Street, Suite 4620
Dallas, TX 75202-3909
Fax: (214) 749-0325

Official Committee of Property Damage
Claimants
c/o Scott L. Baena, Esquire
Jay M. Sakalo, Esquire
Mindy A. Mora, Esquire
Bilzin Sumberg Dunn Baena Price
& Axelrod, LLP
First Union Financial Center
200 S. Biscayne Boulevard, Suite 2500
Miami, FL 33131
Fax: (305) 374-7593

Official Committee of Unsecured Creditors
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